

MT LEGISLATIVE HISTORY

Chapter 313 1977

Bill (H) 80 S _____

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 13 ☒ C

Hearing Date(s) Mar 03 ☒ C

Jan 14 ☒ C

Mar 16 ☒ C

Jan 18 ☒ C

_____ ☐ C

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Date Out Jan 18 ☒ C

Mar 16 ☒ C

no roll, voting or visitors registers for
House minutes.

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

NO.	AUTHOR	SUBJECT	REFERRED TO
	LORY, ET AL	PROCEDURE ACT.	SIGNED 4/5/77 (CH. 285)
78	HARKS, MOORE	TO SUSPEND THE UTILIZATION OF REVALUATIONS OF PROPERTY UNDER THE CYCLICAL APPRAISAL PLAN.	TAXATION 1/7/77
79	SCULLY, VINCENT, RYAN	TO PERMIT DISTRICT JUDGES TO SENTENCE PERSONS CONVICTED OF FELONIES TO IMPRISONMENT WITH NO POSSIBILITY OF PAROLE OR (CH. 580) PARTICIPATION IN THE PRISONER PURLOUGH PROGRAM.	GOVERNOR SIGNED 5/13/77
80	PALMER, O'KEEFE, ET AL	THE MONTANA RESIDENTIAL LAND- LORD AND TENANT ACT OF 1977.	GOVERNOR SIGNED 4/6/77 (CH. 313)
81	SCULLY	TO REPEAL SECTION 94-5-610, R.C.M. 1947, UNLAWFUL POSSES- SION OF INTOXICATING SUBSTANCE BY CHILDREN.	JUDICIARY 1/28/77
82	PISTORIA, WM. BAETH	TO RESTRICT THE ENTITLEMENT OF DISABLED VETERANS TO FREE LICENSE PLATES.	GOVERNOR SIGNED 3/21/77 (CH. 67)
83	BRAND, DRISCOLL	MONTANA TIMBER TAXES ACT.	TAXATION 1/7/77
84	STAIGNILLER, CONROY, ET AL	TO REQUIRE THE FISH AND GAME COM- MISSION TO OBTAIN THE APPROVAL OF THE MONTANA LEGISLATURE BEFORE BUYING AGRICULTURAL LAND LARGER THAN 5 ACRES IN AREA.	KILLED ON SECOND READING 1/26/77
85	DASSINGER, DAY, COX	TO LOWER THE TAX ASSESS- MENT ON LIVESTOCK.	GOVERNOR SIGNED 4/26/77 (CH. 497)
86	KIMBLE, UNDE, ET AL	TO PROVIDE FOR ZERO-BASED BUD- GETING AND PROGRAM PERFORMANCE AUDITING AND FOR SELECTION OF PROGRAMS TO BE MADE BY A JOINT LEGISLATIVE FINANCE AND AUDIT COMMITTEE.	SENATE KILLED IN FINANCE & CLAIMS 4/6/77
87	DAY	TO PROVIDE A \$10 REGISTRATION FEE FOR ALL MOTOR VEHICLES OTHER THAN MOTOR TRUCKS.	KILLED ON SECOND READING 1/29/77

1 *HB* BILL NO. *80*
2 INTRODUCED BY *Palmer O'Keefe Conny Dassing*
3 *Waldron, Tony KAGG*

4 A BILL FOR AN ACT ENTITLED: "THE MONTANA RESIDENTIAL
5 LANDLORD AND TENANT ACT OF 1977; REPEALING 42-201, 42-202,
6 42-204, 42-205, 42-206, and 42-207, R.C.M. 1947."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Short title. This chapter may be cited as
10 "The Montana Residential Landlord and Tenant Act of 1977".

11 Section 2. Purposes and rules of construction. (1)
12 This chapter shall be liberally construed and applied to
13 promote its underlying purposes and policies.

14 (2) Underlying purposes and policies of this chapter
15 are:

16 (a) to simplify, clarify, modernize, and revise the
17 law governing the rental of dwelling units and the rights
18 and obligations of landlords and tenants; and

19 (b) to encourage landlords and tenants to maintain and
20 improve the quality of housing.

21 Section 3. Supplementary principles of law applicable.
22 Unless displaced by the provisions of this chapter, the
23 principles of law and equity, including the law relating to
24 capacity to contract, mutuality of obligations, principal
25 and agent, real property, public health, safety and fire

1 prevention, estoppel, fraud, misrepresentation, duress,
2 coercion, mistake, bankruptcy, or other validating or
3 invalidating causes, supplement its provisions.

4 Section 4. Construction against implicit repeal. No
5 part of this chapter is to be construed as impliedly
6 repealed by subsequent legislation if that construction can
7 reasonably be avoided.

8 Section 5. Administration of remedies — enforcement.
9 (1) The remedies provided by this chapter shall be so
10 administered that an aggrieved party may recover appropriate
11 damages. The aggrieved party has a duty to mitigate damages.
12 (2) A right or obligation declared by this chapter is
13 enforceable by action unless the provision declaring it
14 specifies a different and limited effect.

15 Section 6. Settlement of disputed claim or right. A
16 claim or right arising under this chapter or on a rental
17 agreement, if disputed in good faith, may be settled by
18 agreement.

19 Section 7. Territorial application. This chapter
20 applies to, regulates, and determines rights, obligations,
21 and remedies under a rental agreement, wherever made, for a
22 dwelling unit located within this state.

23 Section 8. Exclusions from application of chapter.
24 Unless created to avoid the application of this chapter, the
25 following arrangements are not governed by this chapter:

INTRODUCED BILL

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to his interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes; and

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises.

Section 9. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, set-off suit in equity, and any other proceeding in which

rights are determined, including an action for possession.

(2) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(3) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(4) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part and also means a manager of the premises who fails to disclose his managerial position.

(5) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(6) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) all or part of the legal title to property; or

(b) all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(7) "Person" includes an individual or organization.

(8) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(9) "Rent" means all payments to be made to the landlord under the rental agreement.

(10) "Rental agreement" means all agreements, written or oral, and valid rules adopted under [section 23] embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(11) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.

(12) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(13) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Section 10. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

Section 11. Unconscionability. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision thereof is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to

1 the setting, purpose, and effect of the rental agreement or
2 settlement to aid the court in making the determination.

3 Section 12. Notice. (1) A person has notice of a fact
4 if:

5 (a) he has actual knowledge of it;

6 (b) in the case of a landlord, it is delivered at the
7 place of business of the landlord through which the rental
8 agreement was made; or

9 (c) in the case of a landlord or tenant, it is
10 delivered in hand to the landlord or tenant or mailed by
11 registered or certified mail to him at the place held out by
12 him as the place for receipt of the communication or, in the
13 absence of such designation, to his last known address.

14 (2) Notice received by an organization is effective
15 for a particular transaction from the time it is brought to
16 the attention of the individual conducting that transaction
17 and, in any event, from the time it would have been brought
18 to his attention if the organization had exercised
19 reasonable diligence.

20 Section 13. Terms and conditions of rental agreement.

21 (1) A landlord and a tenant may include in a rental
22 agreement terms and conditions not prohibited by this
23 chapter or other rule or law, including rent, term of the
24 agreement, and other provisions governing the rights and
25 obligations of the parties.

1 (2) Unless the rental agreement provides otherwise:

2 (a) the tenant shall pay as rent the fair rental value
3 for the use and occupancy of the dwelling unit as determined
4 by the landlord;

5 (b) rent is payable at the landlord's address;

6 (c) periodic rent is payable at the beginning of a
7 term of a month or less and otherwise in equal monthly
8 installments at the beginning of each month;

9 (d) rent is uniformly apportionable from day to day;

10 and

11 (e) the tenancy is week to week in the case of a
12 roomer who pays weekly rent and in all other cases month to
13 month.

14 (3) Rent is payable without demand or notice at the
15 time and place agreed upon by the parties or provided for by
16 subsection (2) of this section.

17 Section 14. Effect of unsigned or undelivered rental
18 agreement. (1) If the landlord does not sign and deliver a
19 written rental agreement signed and delivered to him by the
20 tenant, acceptance of rent without reservation by the
21 landlord gives the rental agreement the same effect as if it
22 had been signed and delivered by the landlord.

23 (2) If the tenant does not sign and deliver a written
24 rental agreement signed and delivered to him by the
25 landlord, acceptance of possession and payment of rent

without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

Section 15. Prohibited provisions in rental agreements. (1) A rental agreement may not provide that a party:

(a) agrees to waive or forego rights or remedies under this chapter;

(b) authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) agrees to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or attorney's fees connected therewith.

(2) A provision prohibited by subsection (1) included in a rental agreement is unenforceable. If a party purposefully uses a rental agreement containing provisions known by him to be prohibited, the other party may recover, in addition to his actual damages, an amount up to 3 months' periodic rent.

Section 16. Separation of rents and obligations to maintain property forbidden. A rental agreement or a

document related thereto may not permit the receipt of rent free of the obligation to comply with [section 20].

Section 17. Attorney fees. In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary. As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

Section 18. Disclosure. (1) A landlord or a person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section shall be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for:

(a) the purpose of service of process and receiving notices and demands; and

(b) the purpose of performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

Section 19. Landlord to deliver possession of dwelling unit. At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and [section 20]. A landlord may bring an action for possession against a person wrongfully in possession.

Section 20. Landlord to maintain premises. (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after the effective date of this act;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be

supplied by him;

(e) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(f) supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant.

(2) If the duty imposed by subsection (1) (a) of this section is greater than a duty imposed by subsections (1) (b) through (1) (f), a landlord's duty shall be determined by reference to subsection (1) (a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1) (e) and (1) (f) of this section and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to

perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1) (a) of this section; and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

Section 21. Limitation of liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. He remains liable to the tenant for all security recoverable by the tenant pursuant to 42-301 through 42-309 and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

Section 22. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that he occupies and uses as reasonably clean and safe as the condition of the premises permit;

(c) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises including the living room, bedroom, kitchen, bathroom, and dining room in a reasonable manner considering the purposes for which they were designed and intended.

(2) A tenant may not destroy, deface, damage, impair,

1 or remove any part of the premises or permit any person to
2 do so.

3 Section 23. Landlord authorized to adopt rules. (1) A
4 landlord may adopt a rule concerning the tenant's use and
5 occupancy of the premises. A rule is enforceable against the
6 tenant only if:

7 (a) its purpose is to promote the convenience, safety,
8 or welfare of the tenants in the premises, preserve the
9 landlord's property from abusive use, or make a fair
10 distribution of services and facilities held out for the
11 tenants generally;

12 (b) it is reasonably related to the purpose for which
13 it is adopted;

14 (c) it applies to all tenants in the premises in a
15 fair manner;

16 (d) it is sufficiently explicit in its prohibition,
17 direction, or limitation of the tenant's conduct to fairly
18 inform him of what he must or must not do to comply;

19 (e) it is not for the purpose of evading the
20 obligations of the landlord; and

21 (f) the tenant has notice of it at the time he enters
22 into the rental agreement or when it is adopted.

23 (2) If a rule is adopted after a tenant enters into a
24 rental agreement that works a substantial modification of
25 his bargain, it is not valid until 7 days after notice to

1 the tenant in the case of a week to week tenancy or 30 days'
2 notice in the case of tenancies from month to month.

3 Section 24. Access to premises by landlord. (1) A
4 tenant may not unreasonably withhold consent to the landlord
5 or his agent to enter into the dwelling unit in order to
6 inspect the premises, make necessary or agreed repairs,
7 decorations, alterations, or improvements, supply necessary
8 or agreed services, or exhibit the dwelling unit to
9 prospective or actual purchasers, mortgagees, tenants,
10 workmen, or contractors.

11 (2) A landlord may enter the dwelling unit without
12 consent of the tenant in case of emergency.

13 (3) A landlord may not abuse the right of access or
14 use it to harass the tenant. Except in case of emergency or
15 unless it is impracticable to do so, the landlord shall give
16 the tenant at least 24 hours' notice of his intent to enter
17 and may enter only at reasonable times.

18 (4) A landlord has no other right of access except:

19 (a) pursuant to court order;

20 (b) as permitted by [sections 34 and 35(2)]; or

21 (c) when the tenant has abandoned or surrendered the
22 premises.

23 Section 25. Use and occupancy by tenant — extended
24 absence. Unless otherwise agreed, a tenant shall occupy his
25 dwelling unit only as a dwelling unit. The rental agreement

1 may require that the tenant notify the landlord of an
2 anticipated extended absence from the premises in excess of
3 7 days no later than the first day of the extended absence.

4 Section 26. Noncompliance by the landlord generally.

5 (1) Except as provided in this chapter, if there is a
6 noncompliance with [section 20] affecting health and safety,
7 the tenant may deliver a written notice to the landlord
8 specifying the acts and omissions constituting the breach
9 and that the rental agreement will terminate upon a date not
10 less than 30 days after receipt of the notice if the breach
11 is not remedied in 14 days. The rental agreement terminates
12 as provided in the notice subject to the following
13 exceptions:

14 (a) If the breach is remediable by repairs, the
15 payment of damages, or otherwise and the landlord adequately
16 remedies the breach before the date specified in the notice,
17 the rental agreement does not terminate by reason of the
18 breach.

19 (b) If substantially the same act or omission which
20 constituted a prior noncompliance of which notice was given
21 recurs within 6 months, the tenant may terminate the rental
22 agreement upon at least 14 days' written notice specifying
23 the breach and the date of termination of the rental
24 agreement.

25 (c) The tenant may not terminate for a condition

1 caused by himself, a member of his family, or other persons
2 on the premises with his consent.

3 (2) Except as provided in this chapter, the tenant may
4 recover actual damages and obtain injunctive relief for any
5 noncompliance by the landlord with the rental agreement or
6 [section 20].

7 (3) The remedy provided in subsection (2) of this
8 section is in addition to a right of the tenant arising
9 under subsection (1).

10 (4) If the rental agreement is terminated, the
11 landlord shall return all security recoverable by the tenant
12 pursuant to 42-301 through 42-309.

13 Section 27. Failure to deliver possession. (1) If the
14 landlord fails to deliver possession of the dwelling unit to
15 the tenant as provided in [section 19], rent abates until
16 possession is delivered and the tenant may:

17 (a) terminate the rental agreement upon at least 5
18 days' written notice to the landlord and, upon termination,
19 the landlord shall return all prepaid rent and security; or

20 (b) demand performance of the rental agreement by the
21 landlord and, if the tenant elects, maintain an action for
22 possession of the dwelling unit against the landlord or a
23 person wrongfully in possession and recover the actual
24 damages sustained by him.

25 (2) If a person's failure to deliver possession is

1 purposeful and not in good faith, an aggrieved party may
2 recover from that person an amount not more than 3 months'
3 periodic rent or treble damages, whichever is greater.

4 Section 28. Damages for minor defects. If the landlord
5 fails to comply with the rental agreement or [section 20]
6 and the reasonable cost of compliance is less than the 1
7 month's rent, the tenant may recover damages for the breach
8 under [section 26(2)].

9 Section 29. Purposeful failure to supply heat, water,
10 hot water, or essential services. (1) If contrary to the
11 rental agreement or [section 20] the landlord purposefully
12 or negligently fails to supply heat, running water, hot
13 water, electric, gas, or other essential services, the
14 tenant may give written notice to the landlord specifying
15 the breach and may:

16 (a) procure reasonable amounts of heat, hot water,
17 running water, electricity, gas, and other essential
18 services during the period of the landlord's noncompliance
19 and deduct their actual and reasonable cost from the rent;

20 (b) recover damages based upon the diminution in the
21 fair rental value of the dwelling unit; or

22 (c) procure reasonable substitute housing during the
23 period of the landlord's noncompliance, in which case the
24 tenant is excused from paying rent for the period of the
25 landlord's noncompliance.

1 (2) If the tenant proceeds under this section, he may
2 not proceed under [section 26] or [section 28] as to that
3 breach.

4 (3) Rights of the tenant under this section do not
5 arise until he has given notice to the landlord and the
6 landlord has had a reasonable opportunity to correct the
7 conditions or if the conditions were caused by the act or
8 omission of the tenant, a member of his family, or other
9 person on the premises with his consent.

10 Section 30. Landlord's noncompliance as defense to
11 action for possession or rent. (1) In an action for
12 possession based upon nonpayment of the rent or in an action
13 for rent when the tenant is in possession, the tenant may
14 counterclaim for any amount he may recover under the rental
15 agreement or this chapter. The court from time to time may
16 order the tenant to pay into court all or part of the rent
17 accrued and thereafter accruing and shall determine the
18 amount due to each party. The party to whom a net amount is
19 owed shall be paid first from the money paid into court and
20 the balance by the other party. The court may at any time
21 release money paid into the court to either party if the
22 parties so agree or if the court finds a party entitled to
23 the sums released. If no rent remains due after application
24 of this section, judgment shall be entered for the tenant in
25 the action for possession.

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

Section 31. Fire or casualty damage. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant, the tenant's family, or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to 42-301 through 42-309 and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be

made as of the date of the fire or casualty.

Section 32. Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service. If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to 42-301 through 42-309 and all prepaid rent.

Section 33. Landlord remedies for noncompliance with rental agreement or failure to pay rent. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with [section 22] affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to [section 12] specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(3) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or [section 22]. If the tenant's noncompliance is purposeful, the landlord may recover treble damages.

Section 34. Failure of tenant to maintain dwelling. If there is noncompliance by the tenant with [section 22] affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of

emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

Section 35. Remedies for absence, nonuse, and abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in [section 25], and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts

1 the abandonment as a surrender, the rental agreement is
 2 terminated by the landlord as of the date the landlord has
 3 notice of the abandonment. If the tenancy is from month to
 4 month or week to week, the term of the rental agreement for
 5 this purpose is a month or a week, as the case may be.

6 Section 36. Waiver of landlord's right to terminate.
 7 Acceptance by the landlord of full payment of rent due with
 8 knowledge of a tenant's default or acceptance by the
 9 landlord of a tenant's performance that varies from the
 10 terms of the rental agreement constitutes a waiver of the
 11 landlord's right to terminate the rental agreement for that
 12 breach unless otherwise agreed after the breach has
 13 occurred. The acceptance of partial payment of rent due does
 14 not constitute a waiver of any right.

15 Section 37. Disposition of personal property abandoned
 16 by tenant. (1) If a tenancy terminates in any manner except
 17 by court order and the landlord reasonably believes the
 18 tenant has abandoned all personal property which the tenant
 19 has left on the premises, the landlord shall:

20 (a) make reasonable attempts to notify the tenant in
 21 writing that the property must be removed:

22 (i) from the premises; or

23 (ii) from the place of safekeeping if the landlord has
 24 stored the goods as provided in subsection (3) of this
 25 section; and

1 (b) specify a day not less than 15 days after delivery
 2 of a notice mailed by certified mail to the last known
 3 address of the tenant, at which specified time the property
 4 will be disposed of if not removed.

5 (2) The landlord may dispose of the property by:

6 (a) selling all or part of the property at a public or
 7 private sale; or

8 (b) destroying or otherwise disposing of all or part
 9 of the property if he reasonably believes the value of the
 10 property is so low that the cost of storage or sale exceeds
 11 the reasonable value thereof.

12 (3) After notifying the tenant as required by
 13 subsection (1) of this section, the landlord shall store all
 14 goods, chattels, and personal property of the tenant in a
 15 place of safekeeping and shall exercise reasonable care for
 16 the property. The landlord may store the property in a
 17 commercial storage company, in which case the storage cost
 18 includes the actual storage charge plus the cost of removal
 19 of the property to the place of storage.

20 (4) If the tenant, upon receipt of the notice provided
 21 in subsection (1) of this section, responds in writing to
 22 the landlord on or before the day specified in the notice
 23 that he intends to remove his property and does not do so
 24 within 15 days after delivery of the tenant's response, the
 25 tenant's property shall be conclusively presumed to be

1 abandoned. If the tenant removes the property, the landlord
2 is entitled to reasonable or actual storage costs for the
3 period the property remains in safekeeping plus the cost of
4 removal of the property to the place of storage.

5 (5) The landlord is not responsible for any loss to
6 the tenant resulting from storage unless the loss is caused
7 by the landlord's purposeful or negligent act. On the event
8 of purposeful violation, the landlord is liable for double
9 damages.

10 (6) A public or private sale authorized by this
11 section shall be conducted under the provisions of
12 87A-9-504(3).

13 (7) The landlord may deduct from the proceeds of the
14 sale the reasonable costs of notice, storage, and sale and
15 must remit to the tenant the remaining proceeds, if any,
16 together with an itemized accounting. If the tenant cannot
17 after due diligence be found, the remaining proceeds shall
18 be deposited with the county treasurer of the county in
19 which the sale occurred and, if not claimed within 3 years,
20 shall revert to the general fund of the county available for
21 general purposes.

22 Section 38. Remedy after termination. If the rental
23 agreement is terminated, the landlord has a claim for
24 possession and for rent and a separate claim for actual
25 damages for any breach of the rental agreement.

1 Section 39. Recovery of possession limited. Except in
2 the case of abandonment, surrender, or as permitted in this
3 chapter, a landlord may not recover or take possession of
4 the dwelling unit by action or otherwise, including
5 purposeful diminution of services to the tenant by
6 interrupting or causing the interruption of heat, running
7 water, hot water, electricity, gas, or other essential
8 services.

9 Section 40. Termination of tenancy — holdover
10 remedies. (1) The landlord or the tenant may terminate a
11 week-to-week tenancy by a written notice given to the other
12 at least 7 days before the termination date specified in the
13 notice.

14 (2) The landlord or the tenant may terminate a
15 month-to-month tenancy by giving to the other at any time
16 during the tenancy at least 30 days' notice in writing prior
17 to the date designated in the notice for the termination of
18 the tenancy. The tenancy terminates on the date designated
19 and without regard to the expiration of the period for
20 which, by the terms of the tenancy, rents are to be paid.
21 Unless otherwise agreed, rent is uniformly apportionable
22 from day to day.

23 (3) If the tenant remains in possession without the
24 landlord's consent after expiration of the term of the
25 rental agreement or its termination, the landlord may bring

1 an action for possession. If the tenant's holdover is
2 purposeful and not in good faith, the landlord may recover
3 an amount not more than 3 months' periodic rent or treble
4 damages, whichever is greater. If the landlord consents to
5 the tenant's continued occupancy, [section 13(4)] applies.

6 Section 41. Landlord and tenant remedies for refusal
7 or abuse of access. (1) If the tenant refuses to allow
8 lawful access, the landlord may either obtain injunctive
9 relief to compel access or terminate the rental agreement.
10 In either case the landlord may recover actual damages.

11 (2) If the landlord makes an unlawful entry or a
12 lawful entry in an unreasonable manner or makes repeated
13 demands for entry otherwise lawful but which have the effect
14 of unreasonably harassing the tenant, the tenant may either
15 obtain injunctive relief to prevent the recurrence of the
16 conduct or terminate the rental agreement. In either case
17 the tenant may recover actual damages.

18 Section 42. Retaliatory conduct prohibited. (1) Except
19 as provided in this section, a landlord may not retaliate by
20 increasing rent, decreasing services, or by bringing or
21 threatening to bring an action for possession after the
22 tenant:

23 (a) has complained of a violation applicable to the
24 premises materially affecting health and safety to a
25 governmental agency charged with responsibility for

1 enforcement of a building or housing code;

2 (b) has complained to the landlord in writing of a
3 violation under [section 20]; or

4 (c) has organized or become a member of a tenant's
5 union or similar organization.

6 (2) If the landlord acts in violation of subsection
7 (1) of this section, the tenant is entitled to the remedies
8 provided in [section 32] and has a defense in any
9 retaliatory action against him for possession. In an action
10 by or against the tenant, evidence of a complaint within 6
11 months before the alleged act of retaliation creates a
12 rebuttable presumption that the landlord's conduct was in
13 retaliation. The presumption does not arise if the tenant
14 made the complaint after notice of a proposed rent increase
15 or diminution of services. For purposes of this section,
16 "rebuttable presumption" means that the trier of fact must
17 find the existence of the fact presumed unless and until
18 evidence is introduced which would support a finding of its
19 nonexistence.

20 (3) Notwithstanding subsections (1) and (2) of this
21 section, a landlord may bring an action for possession if:

22 (a) the violation of the applicable building or
23 housing code was caused primarily by lack of reasonable care
24 by the tenant, a member of his family, or other persons on
25 the premises with his consent;

1 (b) the tenant is in default in rent; or

2 (c) compliance with the applicable building or housing
3 code requires alteration, remodeling, or demolition which
4 would effectively deprive the tenant of use of the dwelling
5 unit.

6 (4) The maintenance of an action under subsection (3)
7 of this section does not release the landlord from liability
8 under [section 27 (2)].

9 Section 43. Savings clause. Transactions entered into
10 before July 1, 1977, and not extended or renewed on or after
11 that date and the rights, duties, and interests flowing from
12 them remain valid and may be terminated, completed,
13 consummated, or enforced as required or permitted by any
14 statute or other law amended or repealed by this chapter as
15 though the repeal or amendment had not occurred.

16 Section 44. Severability. If a part of this act is
17 invalid, all valid parts that are severable from the invalid
18 part remain in effect. If a part of this act is invalid in
19 one or more of its applications, the part remains in effect
20 in all valid applications that are severable from the
21 invalid applications.

22 Section 45. Repealer. Sections 42-201, 42-202, 42-204,
23 42-205, 42-206, and 42-207, R.C.M. 1947, are repealed.

24 Section 46. Summary of act — publication. The
25 department of community affairs shall prepare a simplified

1 summary version of the major provisions of this act and
2 publish such summary in each daily newspaper of the state
3 twice between 30 and 60 days before July 1, 1977.

4 Section 47. Effective date. This act is effective on
5 July 1, 1977. It applies to rental agreements entered into,
6 extended, or renewed on and after that date.

-End-

JUDICIARY

COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 72	act to amend section, to require sheriffs and constables to post notices of sale upon request of a trustee, etc.	1-6	Ramirez	1-7	do pass	1-13
HB 77	act for revision of the laws relating to administrative procedures	1-7	Barrett	1-31 Monday	do pass amended	2-15
HB 79	to permit district judges to sentence persons convicted of felonies to imprisonment with no parole, etc.	1-7	Scully	1-13 Thursday	do pass amended	1-14
HB 80	Montana residential landlord and tenant act	1-7	Palmer	1-14 Friday	do pass amended	1-18
HB 91	relating to landlords & tenants & creating a landlords lien	1-7	Robbins	1-14 Friday	table	1-18
HB 92	relating to landlords & tenants & providing summary procedure under which landlord may terminate, etc.	1-7	Robbins	1-14 Friday	table 1-18 do not pass	2-19

JUDICIARY COMMITTEE

January 13, 1977

The regularly scheduled meeting of the House Judiciary Committee convened at 8 A. M. with Chairman Scully presiding. All members present with the exception of Colburn and Dussault, absent.

Scheduled for hearing were House Bills 72, 77 and 79. House Bill #77 was cancelled because the fiscal note was not yet available.

HEARING OPENED on House Bill 79. Nice-chairman Teague took over the meeting.

REPRESENTATIVE SCULLY, District #76, Sponsor. He explained the basic background for it and the reasoning behind it. This bill will allow district judges to sentence persons convicted of felonies to imprisonment with no possibility of parole or participation in the prisoner furlough. There would be a mandatory minimum. He mentioned that in Montana someone could be sentenced and be back on the street in a short time. He could end up serving only 1/5 of the sentence. He mentioned that Pat Ryan of Great Falls, a probation officer, was highly in support of this bill.

A judge can have three alternative. 1. raise the sentence, 2. lower the sentence, and 3. leave it as it is. Montana has done all three, but for the most part, they stay the same. I don't believe in a mandatory sentence, but this is one way to cover the alternatives.

He gave examples of actual cases, the use of a weapon, etc. Obviously there is a problem in that there are no two situations alike, and its obvious that discretion has to be used.

It would require the district judge to give mandatory flat time sentencing. You have to look at the process. The other alternative is to do away with the penalty form of system.

This is the only sentencing measure that makes sense. I hope you give it a great deal of thought and consideration. He talked about the sentence review board and explained how it works.

REPRESENTATIVE KENNERLY asked if it gives the judge more authority to do more straight sentencing.

REPRESENTATIVE SCULLY answered that they recognized that problem. There are also a lot of social and economic problems that went into that also.

The system is not infallible, but when you have a sentence review board, that process is a sufficient safeguard, and review is getting to be almost automatic. He gave examples of actual cases from his own experience.

REPRESENTATIVE RAMIREZ wondered if we might not get into a patchwork and we should consider all these bills together.

REPRESENTATIVE HOLMES asked how the work furlough program is now funded. Representative Dussault explained the program and how it works. She felt there should be a study to revise the criminal system. She made a motion to amend out the furlough program. The motion was seconded and called and the motion failed, with Representatives Holmes and Dussault voting yes.

REPRESENTATIVE HOLMES moved to pass for the day to allow time for further study. The motion was seconded and called and the motion failed.

REPRESENTATIVE RAMIREZ made a motion to amend subsection 3, line 25, page 3. Following line 24, strike: judgement and insert: judgment. This would correct the spelling of the word judgment. The motion carried with unanimous vote.

After some discussion it was decided to postpone action until later that day on House Bill #79.

CHAIRMAN SCULLY appointed a sub-committee to study House Bills #80, 91 and 92, all dealing with landlord and tenant relationships. The committee as appointed were: Representative Teague, Chairman, Representative Dussault, Representative Seifert and Representative Colburn.

Representative Seifert moved "Do Pass" on House Bill #72. The motion was seconded and the question called. The motion carried with a unanimous vote.

REPRESENTATIVE HAND moved that House Bill #22 be amended as follows: (copy attached).

The amendments carried with unanimous vote.

REPRESENTATIVE KEYSER made a motion that House Bill #22 "Do Pass" as amended. The motion was seconded, question called and the motion carried with note unanimous.

REPRESENTATIVE DUSSAULT made a motion that House Bill #39 "Do Pass". The motion was seconded, question called, and the motion passed with the note unanimous.

REPRESENTATIVE LORY made a motion to "Do Pass" as amended on House Bill 79. The motion was seconded and the question called. Carried with Kennerly, Courtney, Dussault and Holmes voting "No".

Committee staff attorney, Jim Gardner, reported back on House Bill #43. He explained that an attorney is not a judicial officer. Page 17 lines 8. Pages 17, 9 and 13. Who may be impeached? Heads of the departments are subject to impeachment.

Meeting adjourned 11:35 A. M.

JUDICIARY COMMITTEE

January 14, 1977

The regularly scheduled meeting of the House Judiciary Committee was called to order at 8:00 A. M. on January 14, 1977, room 436 of the Capitol Building, Helena, Montana. Chairman John Scully presided.

Scheduled for hearing were House Bills #91, 92, 80 and 81.

HEARING OPENED ON HOUSE BILL #91.

PROPONENT AND CHIEF SPONSOR, REPRESENTATIVE ROBBINS, District #46. He said this bill merely allowed for the creation of a lien on a tenants personal property for rent or for damages. He explained the bill mentioned 24 hour notice to be given by the landlord.

PROPONENT ZACK STEPHENS, I support House Bill #91. I own an apartment house and sometimes I need to enter the premises and they don't want to let me in. At times entry is necessary.

OPPONENT COLIN BANGS, President, Landlord Association. Our reason for supporting this bill is very simple. We spend a long time with tenant problems. We agreed to work on a basic bill and I feel it is covered better in House Bill #80.

OPPONENT KLAUS SITTE, Staff Attorney, Montana Legal Services. I represent the tenants. In reviewing this bill, I think it is unconstitutional because of the way it will be applied. I can see an abuse over this bill.

REPRESENTATIVE ROBBINS closed. I don't think there is any other law that gives the landlord any protection. I ask you to support this bill.

REPRESENTATIVE RAMIREZ, can you tell me how the basic bills compare? Representative Robbins said House Bill #91 would be stronger for landlords.

Mr. Sitte: invasion of privacy and perhaps a lack of due process. There are more protections in House Bill #80.

Hearing closed on House Bill #91.

HEARING OPENED ON HOUSE BILL #92.

PROPONENT AND CHIEF SPONSOR, REPRESENTATIVE ROBBINS. This bill will create a summary procedure under which a landlord may terminate a rental agreement and evict a tenant.

PROPONENT ZACK STEPHENS. He said he owns small rental units, and has had a breach of contract several times. I have had cases where it took some months before I could have them removed with legal assistance even though they violated from the 1st day.

PROPOSER WALTER JACKOVICH: The only provision that might be bad is in section 10. No landlord wants to get rid of a good tenant.

OPPOSER MAY NAN ELLINGSON, MONTANA STUDENT LOBBY: I feel that House Bill 80 provides a better rental agreement. She mentioned the wrongful retainer statute. This deprives the tenant of a trial by jury. I think you should take a careful look at this bill.

OPPOSER COLLIN BANGS, MONTANA REALTORS: In working with House Bill 80, it is a reasonable compromise between landlord and tenant.

OPPOSER KITTY BEAUMONT, MONTANA LOW-INCOME: I oppose both House Bills 91 and 92. How will you put a lien on the poor people that don't have anything? House Bill 80 is a better bill and we all worked hard to get it. I want this bill to be killed.

REPRESENTATIVE ROBBINS: I agree with that. We are not concerned about the good tenants. We are concerned about the bad ones that don't pay their rent, drink up the paycheck and destroy the property. That is the type of person we are concerned with.

MR. SITTE: I think the unlawful retainer provisions should be reworked. I would not agree that it be changed, this comment following general discussion about the provisions just reworked.

CHAIRMAN SCULLY: He asked Mr. Christian if House Bill 80 fails, are you still in opposition to House Bills 91 and 92?

The answer was no.

MR. BANGS: The provision of notice is the only one offering a problem.

OPPOSER CLIFF CHRISTIAN, MONTANA REALTORS: I oppose the bill.

OPPOSER KLAUS SITTE, gave examples of possible results of this bill, especially section 5, posting provision.

THE HEARING CLOSED ON HOUSE BILL #92.

THE HEARING OPENED ON HOUSE BILL #80.

REPRESENTATIVE PALMER, DISTRICT #96, SPONSOR: I introduced a bill last session and it passed out and when it got to the Senate the bill was defeated by one vote. We have to update the law relating to landlord and tenant. This will clarify and update and make it more clear. We worked a year and a half on this bill.

We have a balanced act based on good faith on both sides. Under section 10 the obligation of good faith assumes an honest intent. Under section 22, a tenant must pay his rent, and not destroy the property. Under section 26, this is so that a court could not assume exclusive remedy. He discussed the landlord remedy and the tenant remedy. Section 41 prevents the landlord from retaliating.

PROPONENT CLIFF CHRISTIAN, MONTANA REALTORS: We had a unanimous decision at our convention in Missoula to support House Bill 80. I would like to see legislative intent put into it, so that the intent of the drafters is into the bill so if it goes to court. I hope you will give it serious consideration.

PROPONENT, BETTY HOSTAD, LEAGUE OF WOMEN VOTERS: We are in complete support of this bill. (statement attached).

PROPONENT, MIKE PICHETTE, EXECUTIVE SECRETARY OF THE DEMOCRATIC PARTY: The Democratic Party supports this bill. We are very pleased with this bill. On page 7 of the Democratic Platform we affirm our stand.

PROPONENT, MAE NAN ELLINGSON, MONTANA STUDENT LOBBY: I represent 24,000 students from all 6 university units. We did a study in which we took a random sample and had them assign a priority. This is a compromise bill, but it fully addresses the problem. (statement attached).

REPRESENTATIVE PALMER, SPONSOR: In the repealer section, the 42-202 of the repealer, we don't want it repealed. This is the repair and deduct clause. This is the clause the students need. He mentioned the clause to terminate rent or collect damages, section 26.

PROPONENT, TERI BALDWIN, A STUDENT AT MONTANA STATE UNIVERSITY: Sections 20 and 22 are strong and I support House Bill 80.

PROPONENT, UNIVERSITY OF MONTANA STUDENT BODY PRESIDENT: We had many student and landlord debates. I think House Bill 80 addresses the problem. In House Bill 91 I am concerned about the way the notice is posted. The student might be on a break and he might miss the deadline.

PROPONENT, ELDON PIPER, THE MONTANA LANDLORDS: I support House Bill 80. We have been working for over a year to put this bill before the groups.

PROPONENT, PAT WATKINS, MONTANA STATE LOW INCOME: We support House Bill 80.

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PROPONENT, KITTY BOMAR, REPRESENTING HERSELF: I support House Bill 80. It is fair to both sides.

PROPONENT, COLLIN BANGS, THE MONTANA REALTORS: We agreed that 42-202 not be stricken. I support the bill as it is.

REPRESENTATIVE ROBBIN, DISTRICT #46: I don't know that I am an opponent or a proponent. I would leave the committee to decide on the merits of the three bills.

PROPONENT, KLAUS SITTE, MLSA: This bill represents a year and 1/2 of work. It really appeals to Montana law and to Montana people. It is an attempt to try to be simple. In HB 80 there is no written-in sympathy for the tenant who doesn't pay the rent. I recommend a "do pass".

THERE WERE NO OPPONENTS.

REPRESENTATIVE PALMER: In closing, we agreed to agree. It is a balanced bill. It does clarify and it allows average citizens a redress. I might mention you could repeal in the repealer section but include it in the body of the bill. Either include it there or strike it to clarify.

REPRESENTATIVE TEAGUE: Is there a provision to take care of the tenant.

REPRESENTATIVE PALMER: In the title and in the repealer section, so there is direct reference.

MR. PIFER: Until a bill is put into actual use, we don't know what it will do.

There developed a general comaraderie about the meaning of estoppel, between Representative Dussault and Mr. Sitte.
(general laughter)

MR. SITTE: Estoppel means you are basically being stopped from doing something.

There followed discussion about 42-203 and if it should be repealed. 42-203 applies to real property, other than lodging and dwelling houses.

REPRESENTATIVE ROTH: Do you feel the problems in House Bill 91 and 92 are sufficiently addressed in House Bill 80?

MR. SITTE: Yes, I do.

THE HEARING CLOSED ON HOUSE BILL #80.

JANUARY 14, 1977

The League of Women Voters supports House Bill 80. The League of Women Voters supports this bill under its National Human Resource position of action to achieve equal rights for all in the housing area. This Bill clearly and fairly defines both the rights and the responsibilities of landlord and tenant. The Bill provides a means of publicising the changes and the League of Women Voters supports equal access to the law.

The League of Women Voters has always supported changes that make the law more easily understood and for this reason also we can support the Bill. As the code it is repealing is dated 1947, we are hopeful this needed legislation will pass in this session.

Thank you
LEAGUE OF WOMEN VOTERS OF MONTANA
Bette Hosted 458-9588

MONTANA STUDENT LOBBY TESTIMONY ON HB 80, 91, 92
DELIVERED BY MAE NAN ELLINGSON, MSL LOBBYIST
BEFORE THE HOUSE JUDICIARY COMMITTEE
JANUARY 14, 1977

Montana
Student
Lobby

AN ELLINGSON, LOBBYIST
CARRIE HAHN, ASSISTANT
CKIE HANSON, ASSISTANT

BOX 4217
HELENA, MT 59601

Mr. Chairman, members of the Judiciary Committee. I am Mae Nan Ellingson and I appear this morning to testify for the HB 80 on behalf of the Montana Student Lobby, a coalition representing the 24,000 students of the University of Montana, Montana State University, Western Montana College, Eastern Montana College, Northern Montana College and Montana Tech.

Since this is our first time to appear before this committee, I would like to take a minute to explain how the Student Lobby decides to take a position on legislation. A scientifically selected random sample of students at each institution is polled as to whether they would support a particular bill and if so, what priority they would attach to it.

Ninety-six per cent (96%) of the students polled indicated they were in favor of legislation that would clarify the rights and responsibilities of landlords and tenants and they gave it a high priority for this legislative session.

This is not surprising since students represent the largest class of tenants in the state. With the increasing inability of our institutions to provide adequate dormitories and student housing, students are left to compete in the marketplace for what in most university and college communities is scarce and inadequate housing.

Montana Student Lobby

MAE NAE ELLINGSON, LOBBYIST
CARRIE HAHN, ASSISTANT
JACKIE HANSON, ASSISTANT
BOX 4217
HELENA, MT 59601

Because students are generally without large sums of money and do not have much choice over where they will live, they have never been in an equal bargaining position with landlords. Consequently, students have been subjected to living in unhealthy, unsafe, slum-like conditions while paying exorbitant rent.

Tenants themselves have not been free from fault. There have been untold instances of landlords being left with defaced, destroyed property, uncollected rent and severe headaches. If the offending tenant happened to be a student the landlord categorizes all students as poor tenants, refuses to rent to them and housing becomes more difficult for the student to find; the vicious cycle renews itself.

Out of this unsatisfactory situation and the realization that we cannot change human nature comes an obvious need for legislation that addresses the problems inherent in the landlord-tenant relationship. HB 80 attempts to do this and the Montana Student Lobby supports the intent of the bill.

This bill is worthy of your support because 1) it clearly outlines the rights of landlords and tenants and their responsibilities to one another; 2) it provides adequate remedies and procedures that an aggrieved landlord or tenant can employ when the other party fails to fulfill his obligations; 3) it provides a departure from the common law in that the covenant to pay rent is dependent on the covenant of the landlord to fulfill his obligations; 4) it is written in language that is understandable to the lay people.

In spite of these obvious improvements over the existing law, there should be no mistake on the part of the committee that this is a perfect bill. This is a compromise bill -- a compromise bill that strenghtens the hand of the landlord beyond what is provided in the Uniform Residential Landlord and Tenant Act. This strengthening of the landlord's position has naturally been at the expense of extended tenants' rights.

Because the existing situation is so unacceptable the Student Lobby is willing to sacrifice certain rights and compormise in order to get this bill passed. Admittedly, the bill is one with which neither the tenant nor the landlord can be completely satisfied.

There is one compromise we do not wish to make, however.

When the Student Lobby began supporting this bill it was our understanding that the repair and deduct provision of Section 42-202, R.C.M. 1947 would remain in effect. The printed copy of HB 80 that you have received repeals this section, mistakenly we are told. For the following reasons the retention of that section is crucial for our continued support.

The ability to repair a faulty heating system or replace a broken window and deduct the cost of that repair from one's rent is a far more important remedy to the tenant than any of those provided in HB 80. In communities where there is a shortage of rental units what the tenant needs is a place to live -- the repair and deduct clause affords him this.

Montana
Student
Lobby

NAN ELLINGSON, LOBBYIST
CARRIE HAHN, ASSISTANT
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BOX 4217
HELENA, MT 59601

The right to terminate a rental agreement where the landlord fails to fix the heating system is a vacuous remedy when it is difficult, if not impossible to find another place to live.

Assuming that it was the intent of the drafters of this bill to retain 42-202. I would suggest a style and drafting change in Section 26 to reflect the availability of that remedy. I would like to see the first sentence read "Except as provided in this chapter and Section 42-202, R.C.M. 1947..." so that a court could not construe section 26 and the other parts of this bill to be the exclusive remedies available to the tenant.

Because HB 80 is intended to be a complete listing of landlord-tenant rights and obligations, the Montana Student Lobby opposed the enactment of HB 91 and HB 92. The concerns addressed by these two bills are adequately addressed by HB 80 or other existing Montana laws.

HB 92 provides a summary procedure by which a landlord can evict a tenant for non-payment of rent. Montana has an unlawful detainer statute found at 93-9703 which provides a summary procedure by which a landlord can evict a tenant. This statute is not repealed by HB 80. A crucial difference between the unlawful detainer statute and HB 92 is that the latter deprives the tenant of a trial by jury. Section 33 of HB 80 also allows a landlord to get injunctive relief when a tenant fails to pay rent or comply with his obligations.

Montana
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BOX 4217
HELENA, MT 59601

HB 91 in our opinion appears to be an unconstitutional attempt to re-enact distraint for rent which was abolished by our Supreme Court in 1871. This bill does not provide the necessary due process required by the United States Supreme Court for the taking of private property.

In conclusion, the Montana Student Lobby thanks this committee for the opportunity to present testimony and urges your approval of HB 80.

Thank you.

Mae Nan Ellingson

Montana
Student
Lobby

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CARRIE HAHN, ASSISTANT
ACKIE HANSON, ASSISTANT

BOX 4217
HELENA, MT 59601

House Bill 80

Section 7, Page 2, line 21. Strike "whereas" Insert: "whereas"

Amend Section 26, Page 17, line 7

Following: "may"

Insert: "(a)"

Page 17, line 14

Strike: "(a)"

Insert: "(i)"

Page 17, line 19

Strike: "(b)"

Insert: "(i)"

Page 17, line 25

Strike: "(c)"

Insert: "(iii)"

Page 18, following line 2

Insert: "(b)" make repairs himself that do not cost more than one month's rent and deduct the cost from the rent if he has given the landlord notice and he has not made the repairs within a reasonable time.

JUDICIARY COMMITTEE

EXECUTIVE SESSION

January 18, 1977

Executive session followed the regularly scheduled hearing on January 18, 1977.

The first bill brought under discussion was House Bill #121. Discussion about the bill in regard to eminent domain and possible rewriting of the bill.

REPRESENTATIVE LORY made a motion to lay it on the table. Motion was seconded. It would require a 2/3 majority vote to take it off the table. The motion carried and the bill will be tabled indefinitely.

House Bill #116 was next brought up for action.

REPRESENTATIVE BAETH made a motion to "Do Pass". The motion was seconded.

REPRESENTATIVE COURTNEY: Does this give a greater right than the fifth amendment?

REPRESENTATIVE COLBURN made a substitute motion "Do Not Pass". I feel this will do more harm than good. We are giving them a blank check, so to speak.

REPRESENTATIVE DUSSAULT: What are we giving them a blank check to do?

Mr. Dowling, all this bill does is overthrow a recent supreme court decision.

REPRESENTATIVE LORY: I am against the substitute motion.

REPRESENTATIVE DUSSAULT: I am against the substitute motion.

REPRESENTATIVE ROTH, stated she was for the substitute motion.

REPRESENTATIVE CONROY, stated he was for the substitute motion.

REPRESENTATIVE KEYSER made a motion to amend page 1, line 12 by striking "information", and on page 2, lines 14, 15, 16 strike "all of subsection (3)".

There was discussion that this would nulify the bill. He then suggested that on page 1, line 12 following "of" strike: "information and".

The comment was made that this motion would not do anything.

REPRESENTATIVE KEYSER withdrew his motion. REPRESENTATIVE COLBURN withdrew his motion. Original motion of "Do Pass". Motion failed 9-7.

REPRESENTATIVE LORY made a motion to "Do Not Pass". Motion was seconded and question called.

Motion passed 9-7

No	Yes
Baeth	Colburn
Courtney	Conroy
Day	Hand
Dussault	Eudaily
Helmes	Keyser
Lory	Roth
Ramirez	Seifert
	Teague

REPRESENTATIVE KENNERLY was absent and REPRESENTATIVE SCULLY was excused.

REPRESENTATIVE SCULLY returned from another meeting in which he was carrying a bill.

The sub-committee reported on the study of House Bills #80, 91 & 92. It was recommended that House Bills #91 & 92 be held in committee and that House Bill #80 be passed out of committee.

It was felt that House Bill #80 was a better bill and it should have time to operate.

REPRESENTATIVE DUSSAULT made a motion, the proposed amendment, by the sponsor of the bill, Representative Palmer, be accepted. This amendment had been recommended by both sides. Several other amendments were presented by the sub-committee, also.

The motion carried with unanimous vote.

REPRESENTATIVE KEYSER made a motion to "Do Pass as Amended". Motion seconded, question called. Motion carried unanimously. (copy attached)

REPRESENTATIVE TEAGUE made a motion to "do not pass" on House Bills #91 & 92. Motion was seconded.

REPRESENTATIVE DUSSAULT made a substitute motion to "lay on the table." The motion carried with the vote unanimous.

House Bill #117 was next presented to the committee for action.

REPRESENTATIVE LORY made a motion to "Do Not Pass". Motion seconded.

REPRESENTATIVE RAMIREZ made a substitute motion to "table", until further consideration. Motion carried unanimously.

CHAIRMAN SCULLY appointed various committee members to take the rationale of the committee to the sponsors of these bills that had suffered from "Do Not Pass" committee action, to avoid hard feelings.

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
H.B. 79	2-4-77	3-4-77	4-19-77				4-19-77		
H.B. 80	1-25-77	3-3-77	3-16-77					3-16-77	
H.B. 116	1-27-77	3-10-77	3-16-77					3-16-77	
H.B. 164	1-27-77	3-10-77	3-29-77					3-29-77	
H.B. 177	1-25-77	3-8-77	3-24-77					3-24-77	
H.B. 200	3-5-77	3-28-77	Tabled 3-30-77						
H.B. 202	1-27-77	3-4-77	3-4-77				3-4-77		
H.B. 226	2-2-77	2-21-77	3-12-77					3-12-77	
H.B. 238	3-11-77	3-22-77	3-24-77						3-24-77
H.B. 243	2-23-77	3-25-77	Tabled 3-31-77						
H.B. 247	2-24-77	3-18-77	3-18-77					3-18-77	
H.B. 251	2-21-77	3-25-77	3-31-77					3-31-77	
H.B. 260	2-21-77	3-9-77	3-19-77				3-19-77		
H.B. 261	4-6-77	4-8-77	Referred 4-12-77	to Fin. & Clms.	Comm.				
H.B. 280	2-5-77	3-29-77	3-29-77					3-29-77	
H.B. 291	2-19-77	3-16-77	3-16-77				3-16-77		

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 3, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:40 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All committee members were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Ramirez - District 64, Billings
John Cadby - Montana Bankers Assn.
Mike Griffith - Northwestern Bank, Helena
Gene Phillips - Conrad Bank of Kalispell
Mr. Lattin - Vice-pres., Conrad Bank of Kalispell
Cliff Christian - Montana Assn. of Realtors
Rod Wilson - Billings Chamber of Commerce
Rep. Bob Palmer - District 96, Missoula
Ruth Lange - Montana Assn. of Realtors
Bette Hostad - League of Women Voters of Montana
Klaus D. Sitte - Montana Legal Services Assn.
Kitty Bomar - Montana Poverty Council
Eldon L. Piper - Montana Landlords Assn.
Mae Nan Ellingson - Montana Student Lobby
Carol J. Farris - Great Falls renter

CONSIDERATION OF HOUSE BILL 72:

Rep. Ramirez, sponsor of H.B. 72, said that it had to do with trust indentures and foreclosure of trust indentures, and that it calls for a Notice to be posted 20 days before sale. He told the committee that the Yellowstone County sheriff has refused to post the Notices of Sale although they are paid a fee of \$2 for doing this and also get mileage.

DISPOSITION OF HOUSE BILL 72:

Senator Warden moved that H.B. 72 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 74:

Rep. Ramirez, sponsor of this bill, told the committee that it was one of two bills dealing with out-of-state lenders and that Montana banks sell mortgages to out-of-state lenders but service the accounts in Montana and, in this way, obtain more mortgage money to lend in Montana. However, Montana is not very attractive to these out-of-state lenders as they have to qualify in Montana. Therefore, this bill, in an effort to help this situation, has an exception in

it on page 3 for certain things which are listed for which they do not have to qualify in subsection (g). The amendment in this subsection (g) is what the American Bar Assn. has recommended. He said further that savings and loan associations are dealt with in a different title. Rep. Ramirez submitted a letter which shows that Montana is a very undesirable place from which to purchase loans. (See Exhibit 1) He said that this bill would make Montana a much more attractive place in which to purchase loans and this would make more money available.

The first proponent to testify was John Cadby of the Montana Bankers Assn who said that they support H.B. 74.

The next proponent was Mike Griffith of the Northwestern Bank in Helena and chairman of the Montana Bankers Assn. who said that they support the remarks made by Rep. Ramirez. He told the committee that they were having trouble attracting more money for Montana banks and urged passage of this bill.

Gene Phillips of Kalispell, representing the Conrad Bank of Kalispell, who was accompanied by Mr. Lattin, Vice-Pres. of the Conrad Bank, said that they support H.B. 74.

Cliff Christian of the Montana Assn. of Realtors said that they also support H.B. 74.

Rod Wilson, a proponent representing the Billings Chamber of Commerce, said that they also support H.B. 74.

There were no opponents present. Therefore, the Chairman allowed committee members to question the witnesses. They were particularly concerned about whether this bill might open the door to out-of-state lenders moving into Montana. However, they were told that the sponsor and proponents of the bill did not believe so.

DISPOSITION OF HOUSE BILL 74:

Senator Towe moved to amend page 2, line 9, by striking after "associations" the words "purchasing or participating" and inserting "with relation to the purchasing of or participating". The motion carried unanimously. He then moved that H.B. 74 as amended BE CONCURRED IN. The motion also carried unanimously.

Senator Towe then moved to reconsider the previous motion and to further amend page 4, line 8, by inserting following "property" the words "if there is no activity conducted by the out-of-state borrower or lender with respect to the loan except periodic inspection of the security". This motion carried unanimously. He then moved that H.B. 74 as amended BE CONCURRED IN and the motion carried unanimously.

CONSIDERATION OF HOUSE BILL 80:

Rep. Bob Palmer of Missoula, sponsor of this landlord and tenant

bill, told the committee that they had used H.B. 262 from the last legislative session as a basis to try to come up with a bill all landlords and tenants could live with and H.B. 80 is a combination of these efforts. He said that this bill has six main parts and that he believes it is a very balanced bill. They worked on it over a two-year period of time.

Ruth Lange of the Montana Realtors Assn. was the first proponent to testify. She said that they had put a lot of thought and work into it and that they feel it is a very good bill. It passed the Board of Realtors unanimously.

Bette Hostad of the Montana League of Women Voters was the next proponent to testify. She read a prepared statement. (See Exhibit 1)

The next proponent was Klaus D. Sitte, a Montana Legal Services Assn. attorney, who said that this is the people's bill because the landlords and tenants who worked on it wanted it to cover everything possible. He further testified that it is really less complicated than our present law and that many landlords may find that they do not have to have written agreements with their tenants any longer. He also said that this will truly encourage landlords to improve housing in Montana.

Kitty Bomar, representing the Montana Poverty Council, was the next proponent. She said that the Montana Poverty Council supports H.B. 80.

Eldon Piper, president of the Montana Landlord Assn., was the next proponent to testify. He said that they had worked with the group in Missoula for the last year and a half to get a good bill and that he thinks this bill is unique because everybody agrees on it.

The next proponent was Mae Nan Ellingson, representing the Montana Student Lobby, who said that, since the bulk of students are tenants, they are very interested in the housing shortage and that this bill sets a minimum standard of conduct for both students as tenants and landlords. She also said that this is a better bill than that in the last session of the legislature and that they feel this bill is needed in Montana.

Carol Farris, a Great Falls renter, testified as a proponent of H.B. 80 also. She said that people are getting exorbitant rents for substandard housing in Great Falls because there is such a housing shortage.

There were no opponents to H.B. 80 present.

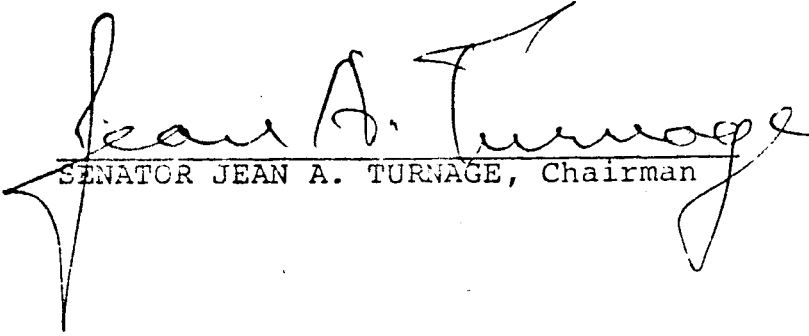
Rep. Palmer closed by saying that this bill is a compromise of both landlords and tenants and clearly defines the rights of both. He said that a Mr. Jackovich of Butte who rents 200 units would have liked to have attended this hearing but could not be here.

The committee discussed the cost of advertising the change in the law in the newspapers, as the bill calls for, because it did not have a fiscal note on it. Rep. Palmer said they would have no objections to whatever the committee did on this. The Chairman told them that the committee would take it under advisement and try to work it out.

At this time, Senator Turnage assigned H.B. 72 to Senator Murray to carry on the floor and H.B. 74 to Senator Towe.

Senator Towe moved to amend H.B. 80 by striking "such summary" and inserting "when this act will take effect and where a summary will be available" and on line 6 to strike "may". The motion carried unanimously. However, it was decided that they would have to work on H.B. 80 another time.

There being no further business, the committee adjourned at 11:00 a.m..


SENATOR JEAN A. TURNAGE, Chairman

March 3, 1977

(Ex. 1)
(H.D. 80)

The League of Women Voters supports House Bill 80. The League of Women Voters supports this bill under its National Human Resource position of action to achieve equal rights for all in the housing area. This Bill clearly and fairly defines both the rights and the responsibilities of landlord and tenant in such sections as 20 and 22, 26 and 33, and section 41, 1 and 2. The Bill provides a means of publicizing the changes under section 46; and the League of Women Voters supports equal access to the law.

The League of Women Voters has always supported changes that make the law more easily understood and for this reason also we can support the Bill. As the code it is repealing is dated 1947, we are hopeful this needed legislation will pass in this session.

Thank you
LEAGUE OF WOMEN VOTERS OF MONTANA
Bette Hostad 458-9588

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 3/3/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		

SENATE

JUDICIARY COMMITTEE

4.B. BILL 7274+80

VISITORS' REGISTER

DATE 3-3-77

Please note bill no.

(check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
Sitte Luitel	SAV	80	✓	
Klaus D. Sitte	Montana Legal Services Assn.	80	✓	
Kitty Bomar	montana poverty	80	✓	
Elton L. Piper	Mont Landlord Assn	80	✓	
Brett Shaper	WNS Nuggett			
Ruth Lange	Montana Association of Realtors	80	✓	
Cliff Christian	MT ASSN of REALTORS	80	✓	
Rod Wilson	BILLINGS CHAMBER OF COMMERCE	74	✓	x
Linda Dillon	Montana Kaimin	80		
Mae Kay Ellingson	Montana Student Body	80	✓	
Vivian Griffith	NORTHWESTERN BK. HON.	74	✓	x
John Gaddy	First Bankers Assn	H 74	✓	x
L. L. L.	Conrad Nat'l BK	#74	✓	x
Gene Phillips	Conrad Nat. Bank.	HB 74	✓	*
* Carol J. Farris	renter	HB 80	✓	
* Sharon M. O.	Landlord	HB 80	✓	
Frances Johnson	Renter	"	✓	
* Lillian J. J.	Great Falls, Montana	80	✓	
+ Mary V. V.	Great Falls MT	80	✓	
+ Donelli Morris	Great Falls MT	80	✓	

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 16, 1977

3

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:35 a.m. in Room 442 of the State Capitol Building on the above date.

ROLL CALL:

All committee members present. However, Sen. Warden was excused until 10:20 to attend another meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Gilligan - Great Falls
Rep. Conroy - District 58, Hardin
Peter Jackson - Western director of W.E.T.A.
Rep. Fagg - Billings
Tom Honzel - County Attorneys Assn.
Walter F. Jackovich - Montana Landlord Assn.

CONSIDERATION OF HOUSE BILL 291:

Rep. Gilligan of Great Falls, sponsor of the bill, had Tom Honzel of the County Attorneys Assn. present the bill to the committee. It provides that obscuring the identity of a firearm is a crime. Hunting weapons are often stolen and are usually taken out of the area for resale. One of the first things they do is remove the serial numbers. That is not a crime in Montana, but it should be. The presumption that a person knows the serial number has been removed. This bill would give us a tool that we can use in regard to stolen property.

DISPOSITION OF HOUSE BILL 291:

Sen. Towe moved that HB 291 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 343:

Rep. Conroy of District 58, Hardin, sponsor of this bill, said that this is a simple bill requested by the people of Hardin. This bill will not prevent filing an injunction. It allows granting of an injunctive order when members of a public interest association are hurt. Peter Jackson, Western Director of W.E.T.A., a comparatively new organization, appeared as an opponent of this bill. He said one of the basic desires of these groups seems to be to stop progress.

DISPOSITION OF HOUSE BILL 343:

Sen. Murray moved that HB 343 BE CONCURRED IN. The motion carried on a vote of 6-1 with Sen. Roberts voting "No" and 1 senator abstaining.

CONSIDERATION OF HOUSE BILL 607:

Rep. Fagg of Billings, sponsor of this bill, said that the

introduction of this bill had been brought about by his personal experience. The bill would allow a motorist stopped for a traffic violation to pay by check if he did not have the cash.

DISPOSITION OF HOUSE BILL 607:

Sen. Regan moved to strike "chartered" and insert "domiciled" on page 1, section 1, line 14. The motion carried unanimously.

Sen. Towe moved to amend page 1, section 1, lines 23 through 25, following "funds is" by striking "guilty of issuing a bad check under 94-6-309 and shall be prosecuted accordingly" and inserting "subject to prosecution under 94-6-309, and obtaining bond constitutes securing services for the purposes of that section". The motion carried unanimously.

Sen. Towe moved that HB 607 as amended BE CONCURRED IN. The motion carried with Sen. Murray and Sen. Olson voting "No".

CONSIDERATION OF HOUSE BILL 273:

Rep. Fagg, Billings, sponsor of this bill, said that this would provide that there is to be a security deposit for cleaning and that unlawful detainer actions are to be filed in justice court and must be tried within eight days.

Walter Jackovich appeared as a proponent of this bill. He is the manager of 160 unit low cost housing project in Butte. He said the purpose of this act is to require that an unlawful detainer action filed in justice court could be tried within 1 day. It requires the tenant must be 1 month behind in rent before the landlord can file. By the time a case goes to court at present, a landlord has not received rent for 3 months and must pay attorneys fees. He said that this bill would expedite matters greatly. HB 80 does not cover the material addressed in this bill.

DISPOSITION OF HOUSE BILL 273:

Sen. Roberts moved that HB 273 BE CONCURRED IN. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 80:

This bill had been considered previously by this committee.

Sen. Murray moved to amend page 3, sec. 8, line 20, following "premises" by striking the "." and inserting "; and

(8) occupancy outside a municipality under a rental agreement which includes hunting, fishing, or agricultural privileges along with the use of the dwelling unit." The motion carried unanimously.

Sen. Murray then moved to amend page 15, section 23, line 9, following "of the" by striking "tenants" and inserting "occupants"; and to further amend page 15, line 15, following "all", by striking "tenants" and inserting "occupants". The motion carried with

Sen. Regan and Sen. Lensink voting "No".

Sen. Towe then moved that HB 80 as amended BE CONCURRED IN.
The motion carried unanimously.

DISPOSITION OF HOUSE BILL 116:

Sen. Towe moved to amend page 2, section 1, line 14, following "Dissemination" by inserting ", except as provided in subsection (4),"; and to further amend page 2, section 1, following line 16, by inserting "(4) if the person claiming the privilege voluntarily offers to testify, with or without having been subpoenaed, before a judicial, legislative, administrative, or other body having the power to issue subpoenas, he waives the provisions of subsections (1) and (2)."
The motion carried unanimously.

Sen. Towe then moved that HB 116 as amended BE CONCURRED IN.
The motion carried unanimously.

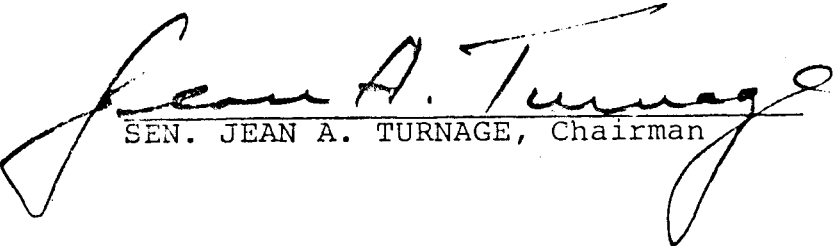
Sen. Turnage, Chairman, assigned the following bills to be carried on 2nd Reading by:

Murray - HB 80 and 343
Towe - HB 273

Regan - HB 607
Roberts - HB 291

Warden - HB 116

There being no further business at this time, the committee adjourned at 11:05 a.m.


SEN. JEAN A. TURNAGE, Chairman

ROLL CALL.

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date _____

[illegible]

March 16, 1977

SENATE
STANDING COMMITTEE REPORT
Judiciary Committee

That House Bill No. 80, third reading, be amended as follows:

1. Amend title, line 6.

Following: "REPEALING"

Insert: "SECTIONS"

Following: "42-201"

Strike: ", 42-202,"

Insert: "and"

2. Amend title, line 7.

Following: "42-204,"

Strike: "42-205, 42-206, and 42-207,"

3. Amend page 3, section 8, line 17.

Following: "purposes;"

Strike: "and"

4. Amend page 3, section 8, line 20.

Following: "premises"

Strike: "."

Insert: "; and"

(8) occupancy outside a municipality under a rental agreement which includes hunting, fishing, or agricultural privileges along with the use of the dwelling unit."

5. Amend page 15, section 23, line 9.

Following: "of the"

Strike: "tenants"

Insert: "occupants"

6. Amend page 15, section 23, line 15.

Following: "all"

Strike: "tenants"

Insert: "occupants"

7. Amend page 29, section 40, line 11.

Following: "13"

Strike: "(4)"

Insert: "(2)(e)"

8. Amend page 32, section 45, lines 3 and 4.

Following: "42-201"

Strike: ", 42-202,"

Insert: "and"

Following: line 3

Strike: "42-205, 42-206, and 42-207,"

HOUSE BILL NO. 80

INTRODUCED BY PALMER, O'KEEFE,

LOGNEY, DASSINGER, WALDRON, LORY, FAGG

A BILL FOR AN ACT ENTITLED: "THE MONTANA RESIDENTIAL
LANDLORD AND TENANT ACT OF 1977; REPEALING SECTIONS 42-201
42-202, AND 42-204, 42-205, 42-206, AND 42-207 R.C.M.
1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This chapter may be cited as
"The Montana Residential Landlord and Tenant Act of 1977".

Section 2. Purposes and rules of construction. (1)
This chapter shall be liberally construed and applied to
promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter
are:

(a) to simplify, clarify, modernize, and revise the
law governing the rental of dwelling units and the rights
and obligations of landlords and tenants; and

(b) to encourage landlords and tenants to maintain and
improve the quality of housing.

Section 3. Supplementary principles of law applicable.
Unless displaced by the provisions of this chapter, the
principles of law and equity, including the law relating to

capacity to contract, mutuality of obligations, principal
and agent, real property, public health, safety and fire
prevention, estoppel, fraud, misrepresentation, duress,
coercion, mistake, bankruptcy, or other validating or
invalidating causes, supplement its provisions.

Section 4. Construction against implicit repeal. No
part of this chapter is to be construed as impliedly
repealed by subsequent legislation if that construction can
reasonably be avoided.

Section 5. Administration of remedies -- enforcement.
(1) The remedies provided by this chapter shall be so
administered that an aggrieved party may recover appropriate
damages. The aggrieved party has a duty to mitigate damages.
(2) A right or obligation declared by this chapter is
enforceable by action unless the provision declaring it
specifies a different and limited effect.

Section 6. Settlement of disputed claim or right. A
claim or right arising under this chapter or on a rental
agreement, if disputed in good faith, may be settled by
agreement.

Section 7. Territorial application. This chapter
applies to, regulates, and determines rights, obligations,
and remedies under a rental agreement, ~~wherever~~ ~~WHEREVER~~
made, for a dwelling unit located within this state.

Section 8. Exclusions from application of chapter.

REFERENCE BILL

1 Unless created to avoid the application of this chapter, the
2 following arrangements are not governed by this chapter:

3 (1) residence at a public or private institution if
4 incidental to detention or the provision of medical,
5 geriatric, educational, counseling, religious, or similar
6 service;

7 (2) occupancy under a contract of sale of a dwelling
8 unit or the property of which it is a part if the occupant
9 is the purchaser or a person who succeeds to his interest;

10 (3) occupancy by a member of a fraternal or social
11 organization in the portion of a structure operated for the
12 benefit of the organization;

13 (4) transient occupancy in a hotel or motel;

14 (5) occupancy by an owner of a condominium unit or a
15 holder of a proprietary lease in a cooperative;

16 (6) occupancy under a rental agreement covering
17 premises used by the occupant primarily for commercial or
18 agricultural purposes; and

19 (7) occupancy by an employee of a landlord whose right
20 to occupancy is conditional upon employment in and about the
21 premises; AND

22 ~~(8) OCCUPANCY OUTSIDE A MUNICIPALITY UNDER A RENTAL~~
23 ~~AGREEMENT WHICH INCLUDES HUNTING, FISHING, OR AGRICULTURAL~~
24 ~~PRIVILEGES ALONG WITH THE USE OF THE DWELLING UNIT.~~

25 Section 9. General definitions. Subject to additional

1 definitions contained in subsequent sections and unless the
2 context otherwise requires, in this chapter the following
3 definitions apply:

4 (1) "Action" includes recoupment, counterclaim,
5 set-off suit in equity, and any other proceeding in which
6 rights are determined, including an action for possession.

7 (2) "Dwelling unit" means a structure or the part of a
8 structure that is used as a home, residence, or sleeping
9 place by a person who maintains a household or by two or
10 more persons who maintain a common household. "Dwelling
11 unit", in the case of a person who rents space in a mobile
12 home park but does not rent the mobile home, means the space
13 rented and not the mobile home itself.

14 (3) "Good faith" means honesty in fact in the conduct
15 or the transaction concerned.

16 (4) "Landlord" means the owner, lessor, or sublessor
17 of the dwelling unit or the building of which it is a part
18 and also means a manager of the premises who fails to
19 disclose his managerial position.

20 (5) "Organization" includes a corporation, government,
21 governmental subdivision or agency, business trust, estate,
22 trust, partnership or association, two or more persons
23 having a joint or common interest, and any other legal or
24 commercial entity.

25 (6) "Owner" means one or more persons, jointly or

1 severally, in whom is vested:

2 (a) all or part of the legal title to property; or

3 (b) all or part of the beneficial ownership and a
4 right to present use and enjoyment of the premises,
5 including a mortgagee in possession.

6 (7) "Person" includes an individual or organization.

7 (8) "Premises" means a dwelling unit and the structure
8 of which it is a part, the facilities and appurtenances
9 therein, and the grounds, areas, and facilities held out for
10 the use of tenants generally or promised for the use of a
11 tenant.

12 (9) "Rent" means all payments to be made to the
13 landlord under the rental agreement.

14 (10) "Rental agreement" means all agreements, written
15 or oral, and valid rules adopted under [section 23]
16 embodying the terms and conditions concerning the use and
17 occupancy of a dwelling unit and premises.

18 (11) "Roomer" means a person occupying a dwelling unit
19 that does not include a toilet, a bathtub or a shower, a
20 refrigerator, a stove, or a kitchen sink, all of which are
21 provided by the landlord and one or more of these facilities
22 are used in common by occupants in the structure.

23 (12) "Single family residence" means a structure
24 maintained and used as a single dwelling unit.
25 Notwithstanding that a dwelling unit shares one or more

1 walls with another dwelling unit, it is a single family
2 residence if it has direct access to a street or
3 thoroughfare and shares neither heating facilities, hot
4 water equipment, nor any other essential facility or service
5 with another dwelling unit.

6 (13) "Tenant" means a person entitled under a rental
7 agreement to occupy a dwelling unit to the exclusion of
8 others.

9 Section 10. Obligation of good faith. Every duty under
10 this chapter and every act which must be performed as a
11 condition precedent to the exercise of a right or remedy
12 under this chapter imposes an obligation of good faith in
13 its performance or enforcement.

14 Section 11. Unconscionability. (1) If the court, as a
15 matter of law, finds that:

16 (a) a rental agreement or any provision thereof is
17 unconscionable, the court may refuse to enforce the
18 agreement or enforce the remainder of the agreement without
19 the unconscionable provision to avoid an unconscionable
20 result; or

21 (b) a settlement in which a party waives or agrees to
22 forego a claim or right under this chapter or under a rental
23 agreement is unconscionable, the court may refuse to enforce
24 the settlement, enforce the remainder of the settlement
25 without the unconscionable provision, or limit the

1 application of any unconscionable provision to avoid an
2 unconscionable result.

3 (2) If unconscionability is put into issue by a party
4 or by the court upon its own motion, the parties shall be
5 afforded a reasonable opportunity to present evidence as to
6 the setting, purpose, and effect of the rental agreement or
7 settlement to aid the court in making the determination.

8 Section 12. Notice. (1) A person has notice of a fact
9 if:

- 10 (a) he has actual knowledge of it;
- 11 (b) in the case of a landlord, it is delivered at the
12 place of business of the landlord through which the rental
13 agreement was made; or
- 14 (c) in the case of a landlord or tenant, it is
15 delivered in hand to the landlord or tenant or mailed by
16 registered or certified mail to him at the place held out by
17 him as the place for receipt of the communication or, in the
18 absence of such designation, to his last known address.

19 (2) Notice received by an organization is effective
20 for a particular transaction from the time it is brought to
21 the attention of the individual conducting that transaction
22 and, in any event, from the time it would have been brought
23 to his attention if the organization had exercised
24 reasonable diligence.

25 Section 13. Terms and conditions of rental agreement.

1 (1) A landlord and a tenant may include in a rental
2 agreement terms and conditions not prohibited by this
3 chapter or other rule or law, including rent, term of the
4 agreement, and other provisions governing the rights and
5 obligations of the parties.

6 (2) Unless the rental agreement provides otherwise:

- 7 (a) the tenant shall pay as rent the fair rental value
8 for the use and occupancy of the dwelling unit as determined
9 by the landlord;
- 10 (b) rent is payable at the landlord's address;
- 11 (c) periodic rent is payable at the beginning of a
12 term of a month or less and otherwise in equal monthly
13 installments at the beginning of each month;
- 14 (d) rent is uniformly apportionable from day to day;
15 and
- 16 (e) the tenancy is week to week in the case of a
17 roomer who pays weekly rent and in all other cases month to
18 month.

19 (3) Rent is payable without demand or notice at the
20 time and place agreed upon by the parties or provided for by
21 subsection (2) of this section.

22 Section 14. Effect of unsigned or undelivered rental
23 agreement. (1) If the landlord does not sign and deliver a
24 written rental agreement signed and delivered to him by the
25 tenant, acceptance of rent without reservation by the

1 landlord gives the rental agreement the same effect as if it
2 had been signed and delivered by the landlord.

3 (2) If the tenant does not sign and deliver a written
4 rental agreement signed and delivered to him by the
5 landlord, acceptance of possession and payment of rent
6 without reservation gives the rental agreement the same
7 effect as if it had been signed and delivered by the tenant.

8 (3) If a rental agreement given effect by the
9 operation of this section provides for a term longer than 1
10 year, it is effective for only 1 year.

11 Section 15. Prohibited provisions in rental
12 agreements. (1) A rental agreement may not provide that a
13 party:

14 (a) agrees to waive or forego rights or remedies under
15 this chapter;

16 (b) authorizes any person to confess judgment on a
17 claim arising out of the rental agreement; or

18 (c) agrees to the exculpation or limitation of
19 liability resulting from the other party's purposeful
20 misconduct or negligence or to indemnify the other party for
21 that liability or the costs or attorney's fees connected
22 therewith.

23 (2) A provision prohibited by subsection (1) included
24 in a rental agreement is unenforceable. If a party
25 purposefully uses a rental agreement containing provisions

1 known by him to be prohibited, the other party may recover,
2 in addition to his actual damages, an amount up to 3 months'
3 periodic rent.

4 Section 16. Separation of rents and obligations to
5 maintain property forbidden. A rental agreement or a
6 document related thereto may not permit the receipt of rent
7 free of the obligation to comply with [section 20].

8 Section 17. Attorney fees. In an action on a rental
9 agreement or arising under this chapter, reasonable attorney
10 fees, together with costs and necessary disbursements, may
11 be awarded to the prevailing party notwithstanding an
12 agreement to the contrary. As used in this section,
13 "prevailing party" means the party in whose favor final
14 judgment is rendered.

15 Section 18. Disclosure. (1) A landlord or a person
16 authorized to enter into a rental agreement on his behalf
17 shall disclose to the tenant in writing at or before the
18 commencement of the tenancy the name and address of:

19 (a) the person authorized to manage the premises; and

20 (b) the owner of the premises or a person authorized
21 to act for the owner for the purpose of service of process
22 and receiving notices and demands.

23 (2) The information required to be furnished by this
24 section shall be kept current and in writing, and this
25 section extends to and is enforceable against any successor

1 landlord, owner, or manager.

2 (3) A person who fails to comply with subsection (1)
3 becomes an agent of each person who is a landlord for:

4 (a) the purpose of service of process and receiving
5 notices and demands; and

6 (b) the purpose of performing the obligations of the
7 landlord under this chapter and under the rental agreement
8 and expending or making available for that purpose all rent
9 collected from the premises.

10 Section 19. Landlord to deliver possession of dwelling
11 unit. At the commencement of the term, a landlord shall
12 deliver possession of the premises to the tenant in
13 compliance with the rental agreement and [section 20]. A
14 landlord may bring an action for possession against a person
15 wrongfully in possession.

16 Section 20. Landlord to maintain premises. (1) A
17 landlord shall:

18 (a) comply with the requirements of applicable
19 building and housing codes materially affecting health and
20 safety in effect at the time of original construction in all
21 dwelling units where construction is completed after the
22 effective date of this act;

23 (b) make repairs and do whatever is necessary to put
24 and keep the premises in a fit and habitable condition;

25 (c) keep all common areas of the premises in a clean

1 and safe condition;

2 (d) maintain in good and safe working order and
3 condition all electrical, plumbing, sanitary, heating,
4 ventilating, air-conditioning, and other facilities and
5 appliances, including elevators, supplied or required to be
6 supplied by him;

7 (e) provide and maintain appropriate receptacles and
8 conveniences for the removal of ashes, garbage, rubbish, and
9 other waste incidental to the occupancy of the dwelling unit
10 and arrange for their removal; and

11 (f) supply running water and reasonable amounts of hot
12 water at all times and reasonable heat between October 1 and
13 May 1, except if the building that includes the dwelling
14 unit is not required by law to be equipped for that purpose
15 or the dwelling unit is so constructed that heat or hot
16 water is generated by an installation within the exclusive
17 control of the tenant.

18 (2) If the duty imposed by subsection (1)(a) of this
19 section is greater than a duty imposed by subsections (1)(b)
20 through (1)(f), a landlord's duty shall be determined by
21 reference to subsection (1)(a).

22 (3) A landlord and tenant of a one-, two-, or
23 three-family residence may agree in writing that the tenant
24 perform the landlord's duties specified in subsections
25 (1)(e) and (1)(f) of this section and specified repairs,

1 maintenance tasks, alteration, and remodeling but only if
 2 the transaction is entered into in good faith and not for
 3 the purpose of evading the obligations of the landlord.

4 (4) A landlord and tenant of a one-, two-, or
 5 three-family residence may agree that the tenant is to
 6 perform specified repairs, maintenance tasks, alterations,
 7 or remodeling only if:

8 (a) the agreement of the parties is entered into in
 9 good faith and not for the purpose of evading the
 10 obligations of the landlord and is set forth in a separate
 11 writing signed by the parties and supported by adequate
 12 consideration;

13 (b) the work is not necessary to cure noncompliance
 14 with subsection (1)(a) of this section; and

15 (c) the agreement does not diminish the obligation of
 16 the landlord to other tenants in the premises.

17 section 21. Limitation of liability. (1) Unless
 18 otherwise agreed, a landlord who conveys, in a good faith
 19 sale to a bona fide purchaser, premises that include a
 20 dwelling unit subject to a rental agreement is relieved of
 21 liability under the rental agreement and this chapter as to
 22 events occurring after written notice to the tenant of the
 23 conveyance. He remains liable to the tenant for all security
 24 recoverable by the tenant pursuant to 42-301 through 42-309
 25 and all prepaid rent.

1 (2) Unless otherwise agreed, a manager of premises
 2 that include a dwelling unit is relieved of liability under
 3 the rental agreement and this chapter as to events occurring
 4 after written notice to the tenant of the termination of his
 5 management.

6 section 22. Tenant to maintain dwelling unit. (1) A
 7 tenant shall:

8 (a) comply with all obligations primarily imposed upon
 9 tenants by applicable provisions of building and housing
 10 codes materially affecting health and safety;

11 (b) keep that part of the premises that he occupies
 12 and uses as reasonably clean and safe as the condition of
 13 the premises permit;

14 (c) dispose from his dwelling unit all ashes, garbage,
 15 rubbish, and other waste in a clean and safe manner;

16 (d) keep all plumbing fixtures in the dwelling unit or
 17 used by the tenant as clean as their condition permits;

18 (e) use in a reasonable manner all electrical,
 19 plumbing, sanitary, heating, ventilating, air-conditioning,
 20 and other facilities and appliances, including elevators, in
 21 the premises;

22 (f) conduct himself and require other persons on the
 23 premises with his consent to conduct themselves in a manner
 24 that will not disturb his neighbors' peaceful enjoyment of
 25 the premises; and

1 (g) use the parts of the premises including the living
2 room, bedroom, kitchen, bathroom, and dining room in a
3 reasonable manner considering the purposes for which they
4 were designed and intended.

5 (2) A tenant may not destroy, deface, damage, impair,
6 or remove any part of the premises or permit any person to
7 do so.

8 Section 23. Landlord authorized to adopt rules. (1) A
9 landlord may adopt a rule concerning the tenant's use and
10 occupancy of the premises. A rule is enforceable against the
11 tenant only if:

12 (a) its purpose is to promote the convenience, safety,
13 or welfare of the tenants OCCUPANTS in the premises,
14 preserve the landlord's property from abusive use, or make a
15 fair distribution of services and facilities held out for
16 the tenants generally;

17 (b) it is reasonably related to the purpose for which
18 it is adopted;

19 (c) it applies to all tenants OCCUPANTS in the
20 premises in a fair manner;

21 (d) it is sufficiently explicit in its prohibition,
22 direction, or limitation of the tenant's conduct to fairly
23 inform him or what he must or must not do to comply;

24 (e) it is not for the purpose of evading the
25 obligations of the landlord; and

1 (f) the tenant has notice of it at the time he enters
2 into the rental agreement or when it is adopted.

3 (2) If a rule is adopted after a tenant enters into a
4 rental agreement that works a substantial modification of
5 his bargain, it is not valid until 7 days after notice to
6 the tenant in the case of a week to week tenancy or 30 days'
7 notice in the case of tenancies from month to month.

8 Section 24. Access to premises by landlord. (1) A
9 tenant may not unreasonably withhold consent to the landlord
10 or his agent to enter into the dwelling unit in order to
11 inspect the premises, make necessary or agreed repairs,
12 decorations, alterations, or improvements, supply necessary
13 or agreed services, or exhibit the dwelling unit to
14 prospective or actual purchasers, mortgagees, tenants,
15 workmen, or contractors.

16 (2) A landlord may enter the dwelling unit without
17 consent of the tenant in case of emergency.

18 (3) A landlord may not abuse the right of access or
19 use it to harass the tenant. Except in case of emergency or
20 unless it is impracticable to do so, the landlord shall give
21 the tenant at least 24 hours' notice of his intent to enter
22 and may enter only at reasonable times.

23 (4) A landlord has no other right of access except:

24 (a) pursuant to court order;

25 (b) as permitted by [sections 34 and 35(2)]; or

(c) when the tenant has abandoned or surrendered the premises.

Section 25. Use and occupancy by tenant -- extended absence. Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

Section 26. Noncompliance by the landlord generally.

(1) Except as provided in this chapter, if there is a noncompliance with [section 20] affecting health and safety, the tenant may:

(A) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. The rental agreement terminates as provided in the notice subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach.

(b) If substantially the same act or omission which

constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement.

(c) The tenant may not terminate for a condition caused by himself, a member of his family, or other persons on the premises with his consent.

(b) MAKE REPAIRS HIMSELF THAT DO NOT COST MORE THAN ONE MONTH'S RENT AND DEDUCT THE COST FROM THE RENT IF HE HAS GIVEN THE LANDLORD NOTICE AND HE HAS NOT MADE THE REPAIRS WITHIN A REASONABLE TIME.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or [section 20].

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to 42-301 through 42-309.

Section 27. Failure to deliver possession. (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in [section 19], rent abates until

1 possession is delivered and the tenant may:

2 (a) terminate the rental agreement upon at least 5
3 days' written notice to the landlord and, upon termination,
4 the landlord shall return all prepaid rent and security; or

5 (b) demand performance of the rental agreement by the
6 landlord and, if the tenant elects, maintain an action for
7 possession of the dwelling unit against the landlord or a
8 person wrongfully in possession and recover the actual
9 damages sustained by him.

10 (2) If a person's failure to deliver possession is
11 purposeful and not in good faith, an aggrieved party may
12 recover from that person an amount not more than 3 months'
13 periodic rent or treble damages, whichever is greater.

14 Section 28. Damages for minor defects. If the landlord
15 fails to comply with the rental agreement or [section 20]
16 and the reasonable cost of compliance is less than the 1
17 month's rent, the tenant may recover damages for the breach
18 under [section 26(2)].

19 Section 29. Purposeful failure to supply heat, water,
20 not water, or essential services. (1) If contrary to the
21 rental agreement or [section 20] the landlord purposefully
22 or negligently fails to supply heat, running water, hot
23 water, electric, gas, or other essential services, the
24 tenant may give written notice to the landlord specifying
25 the breach and may:

1 (a) procure reasonable amounts of heat, hot water,
2 running water, electricity, gas, and other essential
3 services during the period of the landlord's noncompliance
4 and deduct their actual and reasonable cost from the rent;

5 (b) recover damages based upon the diminution in the
6 fair rental value of the dwelling unit; or

7 (c) procure reasonable substitute housing during the
8 period of the landlord's noncompliance, in which case the
9 tenant is excused from paying rent for the period of the
10 landlord's noncompliance.

11 (2) If the tenant proceeds under this section, he may
12 not proceed under [section 26] or [section 28] as to that
13 breach.

14 (3) Rights of the tenant under this section do not
15 arise until he has given notice to the landlord and the
16 landlord has had a reasonable opportunity to correct the
17 conditions or if the conditions were caused by the act or
18 omission of the tenant, a member of his family, or other
19 person on the premises with his consent.

20 Section 30. Landlord's noncompliance as defense to
21 action for possession or rent. (1) In an action for
22 possession based upon nonpayment of the rent or in an action
23 for rent when the tenant is in possession, the tenant may
24 counterclaim for any amount he may recover under the rental
25 agreement or this chapter. The court from time to time may

1 order the tenant to pay into court all or part of the rent
2 accrued and thereafter accruing and shall determine the
3 amount due to each party. The party to whom a net amount is
4 owed shall be paid first from the money paid into court and
5 the balance by the other party. The court may at any time
6 release money paid into the court to either party if the
7 parties so agree or if the court finds a party entitled to
8 the sums released. If no rent remains due after application
9 of this section, judgment shall be entered for the tenant in
10 the action for possession.

11 (2) In an action for rent when the tenant is not in
12 possession, he may counterclaim as provided in subsection
13 (1) of this section but is not required to pay any rent into
14 court.

15 Section 31. Fire or casualty damage. (1) If the
16 dwelling unit or premises are damaged or destroyed by fire
17 or casualty to an extent that enjoyment of the dwelling unit
18 is substantially impaired, the tenant may:

19 (a) immediately vacate the premises and notify the
20 landlord in writing within 14 days thereafter of his
21 intention to terminate the rental agreement, in which case
22 the rental agreement terminates as of the date of vacating;
23 or

24 (b) if continued occupancy is lawful, vacate any part
25 of the dwelling unit rendered unusable by the fire or

1 casualty, in which case the tenant's liability for rent is
2 reduced in proportion to the diminution in the fair rental
3 value of the dwelling unit.

4 (2) This section does not apply when the fire and
5 casualty damage was caused by the purposeful or negligent
6 act of the tenant, the tenant's family, or guests.

7 (3) If the rental agreement is terminated, the
8 landlord shall return all security recoverable pursuant to
9 42-301 through 42-309 and all prepaid rent. Accounting for
10 rent in the event of termination or apportionment shall be
11 made as of the date of the fire or casualty.

12 Section 32. Tenant's remedies for landlord's unlawful
13 ouster, exclusion, or diminution of service. If a landlord
14 unlawfully removes or excludes the tenant from the premises
15 or purposefully diminishes services to the tenant by
16 interrupting or causing the interruption of heat, running
17 water, hot water, electricity, gas, or other essential
18 services, the tenant may recover possession or terminate the
19 rental agreement and, in either case, recover an amount not
20 more than 3 months' periodic rent or treble damages,
21 whichever is greater. If the rental agreement is terminated,
22 the landlord shall return all security recoverable pursuant
23 to 42-301 through 42-309 and all prepaid rent.

24 Section 33. Landlord remedies for noncompliance with
25 rental agreement or failure to pay rent. (1) Except as

1 provided in this chapter, if there is a noncompliance by the
 2 tenant with the rental agreement or a noncompliance with
 3 [section 22] affecting health and safety, the landlord may
 4 deliver a written notice to the tenant pursuant to [section
 5 12] specifying the acts and omissions constituting the
 6 breach and that the rental agreement will terminate upon a
 7 date not less than 14 days after receipt of the notice. If
 8 the breach is not remedied within that time, the rental
 9 agreement terminates as provided in the notice subject to
 10 the following exceptions:

11 (a) If the breach is remediable by repairs, the
 12 payment of damages, or otherwise and the tenant adequately
 13 remedies the breach before the date specified in the notice,
 14 the rental agreement does not terminate.

15 (b) If substantially the same act or omission which
 16 constituted a prior noncompliance of which notice was given
 17 recurs within 6 months, the landlord may terminate the
 18 rental agreement upon at least 5 days' written notice
 19 specifying the breach and the date of the termination of the
 20 rental agreement.

21 (2) If rent is unpaid when due and the tenant fails to
 22 pay rent within 3 days after written notice by the landlord
 23 of nonpayment and his intention to terminate the rental
 24 agreement if the rent is not paid within that period, the
 25 landlord may terminate the rental agreement.

1 (3) Except as provided in this chapter, the landlord
 2 may recover actual damages and obtain injunctive relief for
 3 any noncompliance by the tenant with the rental agreement or
 4 [section 22]. If the tenant's noncompliance is purposeful,
 5 the landlord may recover treble damages.

6 Section 34. Failure of tenant to maintain dwelling. If
 7 there is noncompliance by the tenant with [section 22]
 8 affecting health and safety that can be remedied by repair,
 9 replacement of a damaged item, or cleaning and the tenant
 10 fails to comply as promptly as conditions require in case of
 11 emergency or within 14 days after written notice by the
 12 landlord specifying the breach and requesting that the
 13 tenant remedy it within that period of time, the landlord
 14 may enter the dwelling unit and cause the work to be done in
 15 a workmanlike manner and submit an itemized bill for the
 16 actual and reasonable cost, the fair and reasonable cost, or
 17 the fair and reasonable value thereof as rent on the next
 18 date periodic rent is due or, if the rental agreement has
 19 terminated, for immediate payment.

20 Section 35. Remedies for absence, nonuse, and
 21 abandonment. (1) If the rental agreement requires the tenant
 22 to give notice to the landlord of an anticipated extended
 23 absence in excess of 7 days, as provided for in [section
 24 25], and the tenant fails to do so, the landlord may recover
 25 actual damages from the tenant.

1 (2) During an absence of the tenant in excess of 7
2 uays, the landlord may enter the dwelling unit at times
3 reasonably necessary.

4 (3) If the tenant abandons the dwelling unit, the
5 landlord shall make reasonable efforts to rent it at a fair
6 rental. If the landlord rents the dwelling unit for a term
7 beginning before the expiration of the rental agreement, the
8 rental agreement terminates as of the date of the tenancy.
9 If the landlord fails to use reasonable efforts to rent the
10 dwelling unit at a fair rental or if the landlord accepts
11 the abandonment as a surrender, the rental agreement is
12 terminated by the landlord as of the date the landlord has
13 notice of the abandonment. If the tenancy is from month to
14 month or week to week, the term of the rental agreement for
15 this purpose is a month or a week, as the case may be.

16 Section 36. Waiver of landlord's right to terminate.
17 Acceptance by the landlord of full payment of rent due with
18 knowledge of a tenant's default or acceptance by the
19 landlord of a tenant's performance that varies from the
20 terms of the rental agreement constitutes a waiver of the
21 landlord's right to terminate the rental agreement for that
22 breach unless otherwise agreed after the breach has
23 occurred. The acceptance of partial payment of rent due does
24 not constitute a waiver of any right.

25 Section 37. Disposition of personal property abandoned

1 by tenant. (1) If a tenancy terminates in any manner except
2 by court order and the landlord reasonably believes the
3 tenant has abandoned all personal property which the tenant
4 has left on the premises, the landlord shall:

5 (a) make reasonable attempts to notify the tenant in
6 writing that the property must be removed:

7 (i) from the premises; or

8 (ii) from the place of safekeeping if the landlord has
9 stored the goods as provided in subsection (3) of this
10 section; and

11 (b) specify a day not less than 15 days after delivery
12 of a notice mailed by certified mail to the last known
13 address of the tenant, at which specified time the property
14 will be disposed of if not removed.

15 (2) The landlord may dispose of the property by:

16 (a) selling all or part of the property at a public or
17 private sale; or

18 (b) destroying or otherwise disposing of all or part
19 of the property if he reasonably believes the value of the
20 property is so low that the cost of storage or sale exceeds
21 the reasonable value thereof.

22 (3) After notifying the tenant as required by
23 subsection (1) of this section, the landlord shall store all
24 goods, chattels, and personal property of the tenant in a
25 place or safekeeping and shall exercise reasonable care for

1 the property. The landlord may store the property in a
2 commercial storage company, in which case the storage cost
3 includes the actual storage charge plus the cost of removal
4 of the property to the place of storage.

5 (4) If the tenant, upon receipt of the notice provided
6 in subsection (1) of this section, responds in writing to
7 the landlord on or before the day specified in the notice
8 that he intends to remove his property and does not do so
9 within 15 days after delivery of the tenant's response, the
10 tenant's property shall be conclusively presumed to be
11 abandoned. If the tenant removes the property, the landlord
12 is entitled to reasonable or actual storage costs for the
13 period the property remains in safekeeping plus the cost of
14 removal of the property to the place of storage.

15 (5) The landlord is not responsible for any loss to
16 the tenant resulting from storage unless the loss is caused
17 by the landlord's purposeful or negligent act. On the event
18 of purposeful violation, the landlord is liable for double
19 damages.

20 (6) A public or private sale authorized by this
21 section shall be conducted under the provisions of
22 87A-9-504(3).

23 (7) The landlord may deduct from the proceeds of the
24 sale the reasonable costs of notice, storage, and sale and
25 must remit to the tenant the remaining proceeds, if any,

1 together with an itemized accounting. If the tenant cannot
2 after due diligence be found, the remaining proceeds shall
3 be deposited with the county treasurer of the county in
4 which the sale occurred and, if not claimed within 3 years,
5 shall revert to the general fund of the county available for
6 general purposes.

7 Section 38. Remedy after termination. If the rental
8 agreement is terminated, the landlord has a claim for
9 possession and for rent and a separate claim for actual
10 damages for any breach of the rental agreement.

11 Section 39. Recovery of possession limited. Except in
12 the case of abandonment, surrender, or as permitted in this
13 chapter, a landlord may not recover or take possession of
14 the dwelling unit by action or otherwise, including
15 purposeful diminution of services to the tenant by
16 interrupting or causing the interruption of heat, running
17 water, hot water, electricity, gas, or other essential
18 services.

19 Section 40. Termination of tenancy -- holdover
20 remedies. (1) The landlord or the tenant may terminate a
21 week-to-week tenancy by a written notice given to the other
22 at least 7 days before the termination date specified in the
23 notice.

24 (2) The landlord or the tenant may terminate a
25 month-to-month tenancy by giving to the other at any time

1 during the tenancy at least 30 days' notice in writing prior
 2 to the date designated in the notice for the termination of
 3 the tenancy. The tenancy terminates on the date designated
 4 and without regard to the expiration of the period for
 5 which, by the terms of the tenancy, rents are to be paid.
 6 Unless otherwise agreed, rent is uniformly apportionable
 7 from day to day.

8 (3) If the tenant remains in possession without the
 9 landlord's consent after expiration of the term of the
 10 rental agreement or its termination, the landlord may bring
 11 an action for possession. If the tenant's holdover is
 12 purposeful and not in good faith, the landlord may recover
 13 an amount not more than 3 months' periodic rent or treble
 14 damages, whichever is greater. If the landlord consents to
 15 the tenant's continued occupancy, [section 13~~(4)~~(21)(E)]
 16 applies.

17 Section 41. Landlord and tenant remedies for refusal
 18 or abuse of access. (1) If the tenant refuses to allow
 19 lawful access, the landlord may either obtain injunctive
 20 relief to compel access or terminate the rental agreement.
 21 In either case the landlord may recover actual damages.

22 (2) If the landlord makes an unlawful entry or a
 23 lawful entry in an unreasonable manner or makes repeated
 24 demands for entry otherwise lawful but which have the effect
 25 of unreasonably harassing the tenant, the tenant may either

1 obtain injunctive relief to prevent the recurrence of the
 2 conduct or terminate the rental agreement. In either case
 3 the tenant may recover actual damages.

4 Section 42. Retaliatory conduct prohibited. (1) Except
 5 as provided in this section, a landlord may not retaliate by
 6 increasing rent, decreasing services, or by bringing or
 7 threatening to bring an action for possession after the
 8 tenant:

9 (a) has complained of a violation applicable to the
 10 premises materially affecting health and safety to a
 11 governmental agency charged with responsibility for
 12 enforcement of a building or housing code;

13 (b) has complained to the landlord in writing of a
 14 violation under [section 20]; or

15 (c) has organized or become a member of a tenant's
 16 union or similar organization.

17 (2) If the landlord acts in violation of subsection
 18 (1) or this section, the tenant is entitled to the remedies
 19 provided in [section 32] and has a defense in any
 20 retaliatory action against him for possession. In an action
 21 by or against the tenant, evidence of a complaint within 6
 22 months before the alleged act of retaliation creates a
 23 rebuttable presumption that the landlord's conduct was in
 24 retaliation. The presumption does not arise if the tenant
 25 made the complaint after notice of a proposed rent increase

1 or diminution of services. For purposes of this section,
2 "rebuttable presumption" means that the trier of fact must
3 find the existence of the fact presumed unless and until
4 evidence is introduced which would support a finding of its
5 nonexistence.

6 (3) Notwithstanding subsections (1) and (2) of this
7 section, a landlord may bring an action for possession if:

8 (a) the violation of the applicable building or
9 housing code was caused primarily by lack of reasonable care
10 by the tenant, a member of his family, or other persons on
11 the premises with his consent;

12 (b) the tenant is in default in rent; or

13 (c) compliance with the applicable building or housing
14 code requires alteration, remodeling, or demolition which
15 would effectively deprive the tenant of use of the dwelling
16 unit.

17 (4) The maintenance of an action under subsection (3)
18 of this section does not release the landlord from liability
19 under [section 27(2)].

20 Section 43. Savings clause. Transactions entered into
21 before July 1, 1977, and not extended or renewed on or after
22 that date and the rights, duties, and interests flowing from
23 them remain valid and may be terminated, completed,
24 consummated, or enforced as required or permitted by any
25 statute or other law amended or repealed by this chapter as

1 though the repeal or amendment had not occurred.

2 Section 44. Severability. If a part of this act is
3 invalid, all valid parts that are severable from the invalid
4 part remain in effect. If a part of this act is invalid in
5 one or more of its applications, the part remains in effect
6 in all valid applications that are severable from the
7 invalid applications.

8 Section 45. Repealer. Sections ~~42-201--42-202~~ AND
9 ~~42-204, 42-205--42-206--and--42-207~~, R.C.M. 1947, are
10 repealed.

11 Section 46. Summary of act -- publication. The
12 department of community affairs shall prepare a simplified
13 summary version of the major provisions of this act and
14 publish such summary in each daily newspaper of the state
15 twice between 30 and 60 days before July 1, 1977.

16 Section 47. Effective date. This act is effective on
17 July 1, 1977. It applies to rental agreements entered into,
18 extended, or renewed on and after that date.

-End-